

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

RENE GARCIA,	)	
	)	
Plaintiff,	)	
vs.	)	NO. CIV-14-0656-HE
	)	
LIBERTY MUTUAL INSURANCE,	)	
	)	
Defendant.	)	

**ORDER**

Plaintiff has moved to dismiss this case without prejudice, due to his inability to secure counsel to represent him. Defendant Liberty Mutual Insurance Corporation (“Liberty Mutual”) objects to a dismissal without prejudice.<sup>1</sup> It asks the court to dismiss the action with prejudice or defer ruling on the parties’ motions to dismiss until it considers the motion for summary judgment/judgment on the pleadings Liberty Mutual intends to file. Liberty Mutual contends it has incurred substantial costs after defending the case for more than one year, including attorney’s fees and the expense of retaining two expert witnesses. It also asserts that plaintiff has not met any filing deadlines since January 30, 2015, and failed to appear for his deposition or give notice that he would not attend. The court previously directed plaintiff to appear by new counsel or *pro se* by February 27, 2015, but he did not comply with that order or, as defendant noted, its scheduling order.

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<sup>1</sup>When contacted by plaintiff, defendant did not object to the dismissal without prejudice of plaintiff’s breach of contract claim, but did object to the dismissal of his tort claims without prejudice. Doc. #30, p.1; Doc. #32, pp. 9-10.

While the court is not unsympathetic to defendant's position, it concludes dismissal with prejudice is not warranted. It also concludes that plaintiff should not be required to respond, unrepresented, to defendant's motion for summary judgment, but rather should be allowed time to find new counsel. Therefore, the action will be dismissed without prejudice. However, the dismissal will be conditioned on plaintiff's compliance with certain conditions in the event the case is refiled.

Accordingly, plaintiff's motion to dismiss [Doc. #30] is **GRANTED**. The action is dismissed without prejudice to a future refiling. However, in light of the litigation history, the dismissal is on the condition that, in the event of a future filing of a case based on the claims in this case, plaintiff will be required to: (1) file the case in federal court, or (2) if filed in state court and then removed to federal court, plaintiff shall pay defendant's reasonable costs and attorney's fees incurred in removing the case; and (3) plaintiff shall pay Liberty Mutual any additional attorney's fees and costs it incurs, in other words any duplicative costs it incurs, as a result of the refiling. Subject to these conditions, this case is **DISMISSED WITHOUT PREJUDICE**.

**IT IS SO ORDERED.**

Dated this 10th day of June, 2015.

  
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JOE HEATON  
UNITED STATES DISTRICT JUDGE